

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>YA-SIN EL-AMIN SHAKIR,</b>	)	
	)	
<b>Petitioner,</b>	)	
<b>v.</b>	)	<b>Civil Action No. 19-1652</b>
	)	
<b>MARK CAPOZZA and BEAVER</b>	)	
<b>COUNTY DISTRICT ATTORNEY,</b>	)	
	)	
<b>Respondents.</b>	)	

**MEMORANDUM OPINION and ORDER**

Petitioner Ya-Sin El-Amin Shakir filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, challenging his state court judgment of sentence following his conviction for attempted murder, four counts of aggravated assault, firearms not to be carried without a license, and recklessly endangering another person. ECF No. 4. The case was referred to Magistrate Judge Patricia L. Dodge, who issued a Report and Recommendation, which was adopted by this Court, and resulted in the denial of the Petition for Writ of Habeas Corpus and the denial of a certificate of appealability. *See* ECF Nos. 29 & 34.

On February 14, 2025, Petitioner filed a Motion for Relief Pursuant to F. R. Civ. P. 60(b)(6). ECF No. 40. Magistrate Judge Dodge issued a Report and Recommendation, ECF No. 41, recommending that Petitioner’s Motion be dismissed as an unauthorized second or successive habeas petition. The Magistrate Judge also recommended that a certificate of appealability be denied. Petitioner timely filed objections to the Report and Recommendations on March 11, 2025. ECF No. 42.

The filing of timely objections requires the district judge to “make a de novo determination of those portions of the report . . . to which objection is made.” 28 U.S.C. § 636(b)(1); *Sample v. Diecks*, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989); Fed. R. Civ. P. 72(b)(3).

In doing so, the district court “may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Petitioner objects to the Magistrate Judge’s Report, arguing that she improperly treated his Motion, which he styled as a motion seeking relief pursuant to Rule 60(b), as a second or successive habeas petition. In his Motion, titled as a Rule 60(b)(6) motion, Mr. Shakir argued that a blatant miscarriage of justice occurred based upon the Court denying Mr. Shakir’s insufficient evidence claim. In support, Mr. Shakir argues that the testimony “surrounding victim Brian Elmore,” from the preliminary hearing and the trial, is sufficient to establish that Mr. Shakir is only guilty of aggravated assault, but that such evidence is insufficient to establish that he is guilty of attempted murder.

In her Report, the Magistrate Judge reviewed Mr. Shakir’s Motion, under applicable case law, to conclude that the Motion is not a true Rule 60(b) motion but is instead a habeas claim. ECF No. 41, at 2-5. Mr. Shakir objects, arguing that his Rule 60(b) Motion and his miscarriage of justice claim, combined, amount to a fraud upon the court claim, which is properly brought under Rule 60(b). ECF No. 42, at 1. However, it is clear that Mr. Shakir is challenging the Court’s ruling denying his insufficient evidence claim on the merits. Mr. Shakir continues, in his Objections, to argue that his attempted murder conviction is being upheld based on insufficient evidence. ECF No. 42, at 2. Mr. Shakir’s Motion and Objections both clearly challenge the sufficiency of the evidence that resulted in his attempted murder conviction. Therefore, the Court finds no error with the Report’s analysis leading to the conclusion that Mr. Shakir’s 60(b) Motion is properly construed, under the law, as an unauthorized second or successive habeas

petition. Accordingly, the Court will deny the Objections and adopt the Report and Recommendation.

### ORDER

After *de novo* review of the pleadings and the documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 4th day of April 2025,

IT IS HEREBY ORDERED that Petitioner's Objections are overruled.

IT IS FURTHER ORDERED that the Report and Recommendation, ECF No. 41, filed on February 21, 2025, by Magistrate Judge Dodge, is adopted as the opinion of the Court. A certificate of appealability is DENIED, as jurists of reason would not disagree with the analysis of the Report.

Mr. Shakir's Motion for Relief Pursuant to F. R. Civ. P. 60(b)(6), ECF No. 40, construed as an unauthorized second or successive habeas petition, is dismissed for lack of jurisdiction

IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if the petitioner desires to appeal from this Order he must do so within thirty days by filing a notice of appeal as provided in Rule 3, Fed. R. App. P.

s/Marilyn J. Horan  
United States District Judge

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